

**AGREEMENT TO PURCHASE REAL PROPERTY
AND ESCROW INSTRUCTIONS
(Waveyard Transaction)**

DATE: June __, 2007

SELLER: ***City of Mesa, an Arizona municipal corporation***
Address: 20 East Main Street, Suite 850
Post Office Box 1466
Mesa, Arizona 85211
Attn: Douglas Tessendorf,
Real Estate Services Director
Telephone: 480-644-2520
Facsimile: 480-644-3465
Email: douglas.tessendorf@cityofmesa.org

BUYER: ***Waveyard Development, LLC, a Delaware limited liability company***
Address: 8912 East Pinnacle Peak Road, No. F9-664
Scottsdale, Arizona 85255
Attn: Jerry Hug or Richard Mladick
Telephone: 480-563-8881
Facsimile: 480-342-8886
Email: mladick@waveyard.com
jhug@waveyard.com

ESCROW AGENT: ***Security Title Agency***
Address: 2152 South Vineyard Avenue, Bldg. 6, Ste. 116
Mesa, Arizona
Telephone: 480-345-6345
Facsimile: 480-345-6409
Escrow Officer: Vicki Bartlett
Email: vbartlett@securitytitle.com
Escrow Number:

PROPERTY: The real property located in Maricopa County, Arizona, legally described on Exhibit A, including all improvements, subject to Section 2.5 of this Agreement, located on and all rights and privileges appurtenant to the real property (the "Property").

ARTICLE 1
AGREEMENT OF THE PARTIES

1.1 Agreement. In consideration of the mutual promises and covenants set forth in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to buy the Property on the terms and conditions set forth in this Agreement.

ARTICLE 2
SALES PRICE AND PAYMENT TERMS

2.1 Sales Price. The total sales price which Buyer agrees to pay for the Property is Thirty Million Dollars (\$30,000,000.00), (the "Sales Price"). The Sales Price shall be payable as follows:

(a) Earnest Money. Fifty Thousand and No/100 Dollars (\$50,000.00) as the earnest money (the "Earnest Money") which Buyer agrees to deposit in Escrow on the Opening Date;

(b) At the Closing, Buyer shall deposit with Escrow Agent the amount of Nine Million, Nine Hundred and Fifty Thousand and No/100ths Dollars (\$9,950,000.00) in cash or by wire transfer of immediately available funds (the "Closing Payment"). The balance of the Purchase Price shall be paid to Seller by Buyer at the Close of Escrow by delivery to Seller of a Promissory Note in the amount of twenty million dollars (\$20,000,000) and in the form attached hereto and incorporated herein as Exhibit B (the "Note"), which Note shall be secured by a first position Deed of Trust in the form attached hereto and incorporated herein as Exhibit C (the "Deed of Trust").

2.2 Earnest Money Provisions. All Earnest Money required by this Agreement shall be deposited by wire transfer or other form of immediately available funds to the account of Escrow Agent in the amount of the required Earnest Money. Escrow Agent is hereby instructed to deposit all Earnest Money in a federally-insured money market or similar account, subject to immediate withdrawal, at a bank or savings and loan institution located in Maricopa County, Arizona (an "Approved Investment Account"). Upon Closing, the Earnest Money and interest earned thereon shall be credited to the Sales Price.

2.3 Disbursements. Escrow Agent shall disburse the Earnest Money and interest earned thereon, and the Closing Payment, to Seller on the Closing Date less any funds required to take into account the prorations and other adjustments required of Seller by this Agreement. If the Earnest Money and applicable interest and the Closing Payment are not disbursed to Seller on the Closing Date, such amounts shall be invested by Escrow Agent in an Approved Investment Account until the next business day following the Closing Date when they shall be disbursed to Seller together with all interest earned thereon following the Closing Date. Escrow Agent shall not charge any fee for such investment of the Earnest Money and earned interest. If the Earnest Money is forfeited to Seller as provided in this Agreement, such amounts, with any interest earned thereon, shall be paid immediately to Seller. If Buyer is entitled at any time to a refund of Earnest Money deposits held in Escrow, any interest earned thereon shall be paid to Buyer.

2.4 Non-Refundable Nature of Earnest Money. If Buyer cancels or terminates this Agreement, as permitted under the terms of this Agreement, prior to the end of the Feasibility Period, the Earnest Money shall be returned to Buyer. After the Feasibility Period, the Earnest Money shall be absolutely non-refundable to Buyer, except as otherwise expressly provided in Sections 5.1(a)(v), 5.3, 9.1(b) and 11.2, in consideration for Seller giving and granting Buyer the right to purchase the Property as described in this Agreement and taking the Property off the market and not as a penalty.

2.5 Park and Golf Course Property. Buyer agrees and acknowledges that the purchase of the Property does not include any personal or similar property presently located on the Property that Seller elects to remove from the Property, such as lights, benches, back stops, park, playground, golf course or other recreational equipment, and any other improvements on the Property (the "Park and Golf Course Property"), which Seller shall have the right to remove for the longer of the following periods of time (the "Removal Period"): (i) sixty (60) days after Closing, or (ii) until Buyer undertakes Commencement of Construction as defined in the Development Agreement described in Section 5.1(d) below. Park and Golf Course Property that City does not elect to remove within the Removal Period shall become Buyer's property. City shall have no obligation to remove any Park and Golf Course Property. The terms and conditions of this Section shall survive the Closing and will not merge with the provisions of the closing documents. Additionally, Seller shall have the right to continue to use and operate the softball fields and golf course during the Removal Period; provided, however, that such use and operation of the softball fields and golf course shall not extend the Removal Period. The terms and provisions of this Section 2.5 shall survive the Closing.

ARTICLE 3 ESCROW

3.1 Establishment of the Escrow. An escrow for this transaction (the "Escrow") is established with Escrow Agent, and Escrow Agent is engaged to administer the Escrow.

3.2 Opening Date. Within three (3) business days after the execution of this Agreement by both Buyer and Seller, Seller will deliver a fully executed copy of this Agreement to Escrow Agent and Buyer will deliver the Earnest Money as specified in Section 2.1(a). The date that this Agreement, together with the Earnest Money deposit is delivered to Escrow Agent, is referred to in this Agreement as the "Opening Date." Escrow Agent shall notify Buyer and Seller in writing of the Opening Date.

3.3 Acceptance of Escrow. By accepting the Escrow, Escrow Agent agrees to the terms of this Agreement as they relate to the duties of Escrow Agent.

3.4 Escrow Instructions. This Agreement constitutes escrow instructions to Escrow Agent. If Escrow Agent requires the execution of its standard form printed escrow instructions, Buyer and Seller agree to execute those instructions; however, those instructions will be construed as applying only to Escrow Agent's engagement. If there are conflicts between the

terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement will control.

3.5 Escrow Cancellation Charges. If the Escrow fails to close because of Seller's default, Seller will pay all customary Escrow cancellation charges. If the Escrow fails to close because of Buyer's default or cancellation of this Agreement for any reason other than the default of Seller, Buyer will pay all customary Escrow cancellation charges. If the Escrow fails to close for any other reason, Seller and Buyer will each pay one-half of all customary Escrow cancellation charges.

3.6 Insured Closing Letter. If Escrow Agent does not issue its own title insurance policies, but acts as an agent for the Title Insurer (as defined in Section 6.3), Escrow Agent will cause the Title Insurer to issue to the parties, a closing protection letter or insured closing service in written form satisfactory to Buyer and Seller, within five (5) calendar days following the Opening Date.

ARTICLE 4

INFORMATION TO BE PROVIDED

4.1 Information and Other Items to Be Provided.

(a) Diligence Materials. During the Feasibility Period (as defined in Section 5.1(b)), Seller shall allow Buyer access, upon reasonable notice and during business hours, for review and copying of Seller's Real Estate Department's public records that relate to the Property ("Seller's Materials"). Buyer shall be responsible, at Buyer's sole expense, to undertake any additional investigation desired by Buyer concerning the condition of the Property pursuant to the terms of the Access Agreement described in Section 5.1(b). Seller expressly does not warrant the truthfulness or accuracy of any fact, finding, conclusion, or opinion included in any of the Seller's Materials.

(b) Preliminary Title Report. Escrow Agent shall provide Buyer and Seller as soon as possible following the Opening Date, but in no event later than forty-five (45) days following the Opening Date, with (i) a commitment for an ALTA extended owner's title insurance policy (Form 2006) covering the Property to be issued by the Title Insurer to Buyer (the "Report"), which Report shall show the status of title to the Property as of the date of the Report and contain the express commitment of the Title Insurer to issue the Title Policy (described in Section 6.3), and (ii) legible copies of all documents referred to in the Report.

(c) Survey. Buyer shall have a current ALTA Survey of the Property (the "Survey") prepared by a registered land surveyor, licensed in the State of Arizona, satisfactory to Seller and Buyer, prior to expiration of the Feasibility Period. The Survey will show all easements, encroachments, and other matters affecting the Property, and indicate the acreage of the Property. The Survey shall be certified to be accurate, complete and correct to Buyer, Seller, and Title Insurer. Buyer shall provide Seller with three (3) copies of the Survey and Escrow Agent with one (1) copy of the Survey.

(d) Public Easements. Seller shall retain rights, in the form of easements on, over, under and across the Property to provide for repair and maintenance of, continued use of, and access to, the existing ditches, pipes, conduits, utility lines and other facilities and infrastructures located either on the Property, or on adjacent property owned by Seller. The nature of the easements, the form of easement grant and the exact descriptions of all easement premises (collectively, the "Easements") shall be agreed to by Buyer and Seller prior to the expiration of the Feasibility Period. Seller, at its sole election, may either reserve the Easements, or require Buyer to grant the Easements to Seller (and/or any other named parties in the approved easement grants) at Closing, either by instrument or by map of dedication. Any reserved Easement shall be deemed an Approved Title Exception; and any Easement granted by Buyer to Seller at Closing shall be recorded immediately after the Deed, and prior to any lien, claim or encumbrance against the Property by or in favor of Buyer. Buyer acknowledges that, due to the adjacent City Wastewater Treatment Facility (the "Treatment Facility"), the Easements will include terms and conditions such as to allow installation, repair and maintenance, to all utilities and improvements related to the Treatment Facility. If the location, area, terms and conditions of the Easements are not resolved and mutually approved by Seller and Buyer (in Seller's and Buyer's sole and absolute discretion) within the Feasibility Period, either party may terminate this Agreement by delivery of written notice to the other party, and the parties shall have no further obligations to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

(e) Property. While the Property is legally described in Exhibit A, Seller and Buyer agree that this legal description must be modified or corrected in order to exclude from the current Exhibit A certain real property that will be retained by Seller as a public park, and to describe the Property as containing not more than 121 acres. Within the Feasibility Period, Seller (acting through its City Manager) shall determine the correct legal description for the Property (the "Corrected Legal Description"), and deliver a copy of the Corrected Legal Description to Buyer and to Escrow Agent, which Corrected Legal Description shall thereupon be substituted for the current Exhibit A. If Buyer does not approve the Corrected Legal Description, then within ten (10) business days after having been provided with the Corrected Legal Description by Seller, Buyer (in Buyer's sole and absolute discretion) may terminate this Agreement by delivery of written notice of such termination, and the parties shall have no further obligations to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination. Buyer acknowledges and agrees that the Property does not include the City's well site, or any improvements at the well site, generally located at the northeastern boundary of the Property. Buyer further acknowledges that the retained City property and park shall include a "linear" park that runs along the north side of Eighth Street. The Sales Price shall not be reduced or increased for any legal description that results in a reduction or increase in size of the Property.

(f) Lease. Within the Feasibility Period, Seller (as Lessor) and Buyer (as Tenant) shall mutually agree to the terms of a lease (the "Lease") of approximately 5 acres of property (the "Lease Property") that is located adjacent to the Property and the Treatment Facility. Buyer acknowledges that, due to the adjacent Treatment Facility, the Lease will include terms and conditions for the installation, repair and maintenance of all underground and overhead

utilities (water, gas, sewer, electric, phone, cable, etc.) necessary for the operation and expansion of the Treatment Facility, and allow Seller to terminate the Lease if Seller expands its Treatment Facility. If the Lease Area and the terms and conditions of the Lease are not resolved and mutually approved by Seller and Buyer (in Seller's and Buyer's sole and absolute discretion) within the Feasibility Period, either party may terminate this Agreement by delivery of written notice to the other party, and the parties shall have no further obligations to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

(g) Wall Agreement. Within the Feasibility Period, Seller and Buyer shall mutually agree to the terms of an agreement (the "Wall Agreement") for a perimeter wall or fence around the portions of the Treatment Facility that will be adjacent to the Property and Lease Property. If the terms of the Wall Agreement are not resolved and mutually approved by Seller and Buyer (in Seller's and Buyer's sole and absolute discretion) within the Feasibility Period, either party may terminate this Agreement by delivery of written notice to the other party, and the parties shall have no further obligations to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

(h) Well Agreement. Within the Feasibility Period, Seller and Buyer shall mutually agree to the terms of an agreement (the "Well Agreement") regarding the permitting, equipment installation, security, operation and maintenance of City of Mesa Well #27 (Arizona Department of Water Resources Well Number 55-583894). If the terms of the Well Agreement are not resolved and mutually approved by Seller and Buyer (in Seller's and Buyer's sole and absolute discretion) within the Feasibility Period, either party may terminate this Agreement by delivery of written notice to the other party, and the parties shall have no further obligations to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

(i) Park Agreement. Within the Feasibility Period, Seller and Buyer shall mutually agree to the terms of an agreement (the "Park Agreement") for the payment for costs and expenses related to the modifications to Riverview Park and Golf Course (the "Park") and/or the obligation to construct or provide improvements to the Park and/or provide or pay for Park maintenance. If the terms of the Park Agreement are not resolved and mutually approved by Seller and Buyer (in Seller's and Buyer's sole and absolute discretion) within the Feasibility Period, either party may terminate this Agreement by delivery of written notice to the other party, and the parties shall have no further obligations to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

ARTICLE 5

CONDITIONS TO CLOSING

5.1 Conditions to Buyer's Obligation to Close. Buyer's obligations to close this transaction are subject to the satisfaction (or waiver by Buyer in writing), of the following conditions on and as of the expiration of the Feasibility Period unless an earlier date is specified:

(a) Title Review. Buyer shall be satisfied with the status of title to the Property as disclosed by the Report and the Survey. In that regard:

(i) Buyer shall have the earlier of ninety (90) days following the Opening Date or thirty (30) days following its receipt of the Survey and Report (the "Title Review Period") to approve or disapprove the status of title as shown by the Survey or the Report. If Buyer is dissatisfied with any exception to title as shown in the Report or the Survey that reflects a material flaw in Seller's title to the Property, then Buyer may, by giving notice to Seller and Escrow Agent within the Title Review Period, either:

(1) Cancel this Agreement; or

(2) Provisionally accept title subject to Seller's cure of the material flaw in Seller's title described in Buyer's notice either by removal of any disapproved matters, exceptions or objections; or Seller obtaining title insurance endorsements satisfactory to Buyer against such matters, exceptions and objections within ninety (90) days following receipt of Buyer's notice ("Seller's Title Cure Period"). If Seller does not remove such matters, exceptions and objections before the expiration of the Seller's Title Cure Period, then, Buyer's sole and exclusive remedies shall be either to waive such disapproved matters or to cancel this Agreement by giving written notice to Seller and Escrow Agent on or before the tenth (10th) calendar day following expiration of the Seller's Title Cure Period. Seller shall have no affirmative obligation whatsoever to eliminate or obtain title insurance endorsements over any matters shown by the Report or Survey to which Buyer has made an objection.

(ii) If, prior to Closing, Escrow Agent issues a supplemental title report showing additional exceptions to title (a "Title Supplement"), Buyer shall have a period of time equal to ten (10) days from the date of receipt of the Title Supplement and a copy of each document referred to in the Title Supplement (a "Supplemental Title Review Period") in which to give notice of dissatisfaction as to any material title defect reflected by any additional exceptions shown in the Title Supplement. If Buyer is dissatisfied with any additional exception in the Title Supplement that reflects a material flaw in Seller's title to the Property, then Buyer may, by giving notice to Seller and Escrow Agent within the Supplemental Title Review Period, either:

(1) Cancel this Agreement; or

(2) Provisionally accept title subject to Seller's cure of the material flaw in Seller's title described in Buyer's notice by removal of any disapproved matters, exceptions and objections, or Seller obtaining title insurance endorsements satisfactory to Buyer against such matters, exceptions and objections within thirty (30) days following issuance of the applicable Title Supplement (the "30-Day Period"). If Seller does not remove such matters, exceptions and objections before the expiration of the 30-Day Period, then, Buyer's sole and exclusive remedy shall be either to waive such disapproved matters or to cancel this Agreement by giving written notice to Seller and Escrow Agent on or before the 10 (10th) calendar day following expiration of the 30-Day Period. Seller shall have no affirmative obligation to

eliminate or obtain title insurance endorsements over any matters shown by the Title Supplement to which Buyer has made an objection.

(iii) If Buyer does not object to an exception to title as disclosed by the Report or Title Supplement within the Title Review Period or Supplemental Title Review Period, as applicable, the matter will be deemed to have been approved by Buyer. The matters shown in the Report and any Title Supplement (other than standard printed exceptions and exclusions that will be included in the Title Policy) that are approved or deemed approved by Buyer in accordance with this Section 5.1(a), and any other matters approved by Buyer in writing, are referred to in this Agreement as the "Approved Title Exceptions."

(v) Upon a cancellation in accordance with the provisions of Section 5.1(a)(i), all Earnest Money shall be returned to Buyer, together with all documents deposited in Escrow by Buyer, if the cancellation occurs within ten (10) calendar days following expiration of the Title Review Period, in the event of cancellation under Section 5.1(a)(i)(1) or the Seller's Title Cure Period, in the event of cancellation under Section 5.1(a)(i)(2). If the cancellation occurs following the Feasibility Period and following such ten (10) day period after expiration of the Title Review Period or the Title Cure Period, as applicable, all Earnest Money required to be paid prior to such date shall be paid to and retained by Seller unless the cancellation arises out of a new title exception voluntarily placed on the Property by Seller without Buyer's consent or deemed consent pursuant to Section 5.1(a)(iii), in which case the Earnest Money shall be returned to Buyer upon such cancellation. Following any cancellation pursuant to this provision, all documents deposited in Escrow by Seller shall be returned to Seller and this Agreement shall terminate.

(b) Buyer's Investigations. Buyer shall have until 5:00 P.M. (M.S.T.) on the two hundred and seventieth (270th) day following the Opening Date (the "Feasibility Period") to conduct an investigation and inspection of the Property (subject to the obligation, which Buyer confirms, to restore any damage caused by its activities and to indemnify Seller as provided in the Access Agreement). Buyer's investigation may include, among other things: (1) the physical condition of the Property; (2) the environmental condition of the Property; and (3) the feasibility of Buyer's anticipated development of the Property and matters related thereto. Buyer shall execute the Access Agreement attached hereto as Exhibit D (the "Access Agreement") on the Opening Date, which shall govern the terms and conditions of Buyer's rights to access the Property prior to the Closing or earlier termination of this Agreement. If Buyer is not satisfied with its investigations and inspections with respect to the Property and this transaction, or if the further agreements (the Easements, the Mutually Approved Legal Description, the Lease, the Wall Agreement, the Well Agreement and the Park Agreement) are disapproved by Buyer in its sole discretion, or if the status of or City's resolution of the City Consequences is disapproved by Buyer in its sole discretion, then Buyer will have the right, exercisable in its sole discretion, to cancel this Agreement by delivering written notice of cancellation to Seller and Escrow Agent prior to the end of the Feasibility Period, in which case all Earnest Money deposited with Escrow Agent prior to cancellation shall be returned to Buyer.

(c) Pre-Development Activities. Buyer shall have the right, at Buyer's cost

during the term of this Agreement, to engage in the following activities with respect to the Property: hire a marketing team with a qualified brokerage firm; design and produce a building rendering, site plan and floor plans; prepare marketing brochures and support materials for the Project; meet with prospective users, prepare lease offers, and obtain pre-leasing commitments; obtain pre-construction bids as needed to secure reliable cost estimates; process site development and/or architectural review approvals for the Property; and solicit project construction financing offers. All of the foregoing shall be conditioned on Buyer's acquisition of the Property and none of the foregoing shall result in a lien or encumbrance on the Property that is not removed upon the termination of this Agreement.

(d) Development Agreement and Election. Buyer and Seller intend to enter, or have entered, into a development agreement (the "Development Agreement") for the Property. The Development Agreement provides, subject to conditions and restrictions, for certain tax rebates and expenditures that are subject to provisions of Section 613 of the Mesa City Charter. If the Section 613 Incentives (as defined in the Development Agreement) in the Development Agreement are not approved by a majority of the electorate voting at the Election (as defined in the Development Agreement), on November 6, 2007, then this Agreement shall automatically terminate and shall be of no further force or effect, and Buyer and Seller shall have no further obligations or liabilities hereunder, except for any obligations or liabilities which survive the termination of this Agreement.

(e) Zoning. Buyer and Seller acknowledge and agree that this Agreement is contingent upon the Zoning (as defined in the Development Agreement) being adopted and approved by the City Council, with stipulations acceptable to Buyer.

5.2 Conditions to Seller's Obligation to Close. Seller shall have no obligation to sell the Property to Buyer unless each of the following matters has been satisfied; provided, however, that Seller in its sole and unfettered discretion may elect to waive any such matter.

(a) Full Compliance. Seller's obligation to close this transaction is subject to Buyer fully performing all of its obligations to be performed by Buyer on or before the Closing Date (unless waived by Seller in writing). If Buyer has not fulfilled all such obligations on or before the Closing Date, Seller may pursue its remedies for Buyer's default if Buyer has not performed all such obligations within ten (10) days after receipt of written notice from Seller, describing same and the action required for performance, as required by Section 11.3.

(b) Seller's Council Approval. The City of Mesa Council's approval of the sale of the Property prior to Closing.

(c) Lease. At Closing, Buyer (as Tenant) shall have executed and delivered to Escrow Agent, for delivery to Seller, the Lease with the terms and legal description approved by Seller.

(d) Wall Agreement. On or before the Close of Escrow, Buyer shall have executed and delivered to Escrow Agent, for delivery to Seller, the Wall Agreement with the terms approved by Seller.

(e) Well Agreement. On or before the Close of Escrow, Buyer shall have executed and delivered to Escrow Agent, for delivery to Seller, the Well Agreement with the terms approved by Seller.

(f) Park Agreement. On or before the Close of Escrow, Buyer shall have executed and delivered to Escrow Agent, for delivery to Seller, the Park Agreement with the terms approved by Seller.

(g) Easements. On or before the Close of Escrow, Buyer shall have executed and delivered to Escrow Agent, for recordation by Escrow Agent, the Easements in the form(s) and with the terms approved by Seller.

(h) Release of Federal Reverter. On or before the Close of Escrow, the United States of America, acting by and through the Secretary of Interior and the Director of the National Park Services (the "Park Services") shall have provided Seller a release or discharge of the deed restrictions and reversionary rights in favor of the federal government, with respect to a portion of the Property that the City obtained from the Park Services, with such release or discharge to be subject to terms and conditions satisfactory to Seller in its sole and absolute discretion.

(i) Relocation of Park Boundary Designation. On or before Close of Escrow, Seller obtaining approval of a conversion through an amendment to the participant agreement from the National Park Service and Arizona State Parks to transfer the Land and Water Conservation Fund 6(f) park boundary protection designation from the northern half of the Riverview Park to a site approved by the National Park Service and Arizona State Parks.

(j) Financial Ability to Perform. On or before the Close of Escrow, Buyer shall have provided clear and sufficient evidence to establish to the City Manager, as determined in his sole and absolute discretion, the financial ability of Buyer to perform the obligations in the Development Agreement, including the financial ability to construct all the Minimum Improvements (as defined in the Development Agreement).

(k) City Consequences. The City is determining the applicability or extent of possible restrictions, limitations or consequences that may be imposed upon the City or the Property (which restrictions, limitations or consequences are referred to in this Agreement and the "City Consequences") that may take the form, *inter alia*, of reimbursements or reallocations of monies to federal or other agencies, expense required or incurred in connection with identifying, evaluating and mitigating archeological sites or artifacts located in or around the Property, delays incurred in seeking federal and other third-party approvals of requested or required actions or submittals, and restrictions on the transferability of portions of the Property. At any time prior to the Close of Escrow that the City determines, in its sole and absolute discretion, that the City Consequences are not acceptable to the City, then the City, upon written

notice to Buyer and Escrow Agent may cancel this Agreement and the Escrow. Notwithstanding the foregoing, the City agrees to use good faith efforts to reduce the effects of any City Consequences and to confirm to Buyer at the earliest opportunity that the City Consequences are satisfactory to the City. Upon written request from Buyer, Seller shall advise Buyer of the City's efforts with regard to determining and evaluating the City Consequences.

(l) Approved Site Plan. Not less than thirty (30) days before the Close of Escrow, Buyer shall have obtained an approved site plan (the "Approved Site Plan") from the Mesa City Council, which includes all the Minimum Improvements (as defined in the Development Agreement).

(m) DRB Approval. Not less than thirty (30) days before the Close of Escrow, Buyer shall have obtained approval from the City's Design Review Board, or City Council as permitted under the City's Zoning Ordinance (the "DRB Approval"), for the design and construction of all the Minimum Entertainment Improvements (as defined in the Development Agreement) and all the Minimum Resort Improvements (as defined in the Development Agreement).

(n) Issued Permits. At or before the Close of Escrow, Buyer shall have obtained permits (the "Issued Permits") from the City of Mesa's Building Safety Division for all the Minimum Entertainment Improvements (as defined in the Development Agreement) and all the Minimum Resort Improvements (as defined in the Development Agreement), including the actual payment of all fees for such permits and the actual issuance of such permits.

(o) Public Vote. If the Section 613 Incentives in the Development Agreement are not approved by a majority of the electorate voting at the Election, on November 6, 2007, this Agreement shall automatically terminate and shall be of no further force or effect, and Buyer and Seller shall have no further obligations or liabilities hereunder, except for any obligations or liabilities which survive the termination of this Agreement.

5.3 Return of Earnest Money. If Closing does not occur solely due to Sections 5.2(h), (i), (j), (k) or (o), the Earnest Money shall be returned to Buyer.

ARTICLE 6

CLOSING DOCUMENTS; TITLE POLICIES

6.1 Seller's Closing Documents. On or before the Closing Date, Seller will deposit the following documents into the Escrow for delivery to Buyer at the Closing each of which will have been duly executed and, where appropriate, acknowledged:

(a) Deed. A Special Warranty Deed in the form attached hereto as Exhibit E (the "Deed") for conveyance of the real property, including the property restrictions set forth in the Deed.

(b) Title Insurance Affidavit. An affidavit from Seller to the Escrow Agent and Title Insurer regarding parties in possession and mechanic's and materialmen's liens, in customary form, stating information accurate at the time of Closing to Seller's actual knowledge and belief, for Title Insurer to delete exceptions in the title insurance policy for parties in possession (other than the tenant under the Tenant Lease, if applicable) and mechanic's and materialmen's liens.

(c) Easements. Forms of easement grants for the Easements, in form previously agreed by the Parties.

(d) FIRPTA Affidavit.

(e) Lease.

(f) Note.

(g) Deed of Trust.

(h) Additional Documents. Such other documents as may be necessary or appropriate to transfer and convey the Property to Buyer and to otherwise consummate this transaction in accordance with the terms of this Agreement.

6.2 Buyer's Closing Documents. On or before the Closing and in addition to all funds required to be paid by Buyer, Buyer will deposit into the Escrow the following documents for delivery to Seller at the Closing, each of which will have been duly executed and, where appropriate, acknowledged:

(a) Deed.

(b) Easements. Forms of easement grants for the Easements, in form previously agreed by the Parties.

(c) Affidavit of Real Property Value.

(d) Lease.

(e) Additional Documents. Such other documents as may be necessary or appropriate to acquire the Property and to otherwise consummate this transaction in accordance with the terms of this Agreement.

6.3 Title Policy. At the Closing, Seller will provide Buyer with an ALTA extended coverage owner's policy of title insurance (the "Title Policy") issued by Fidelity National Title Insurance Company (the "Title Insurer"), in the amount of the Sales Price, effective as of the Closing, insuring Buyer that fee simple title to the Property is vested in Buyer, subject only to the usual printed exceptions and exclusions contained in such title insurance policies and the

Approved Title Exceptions. The Title Policy shall contain endorsements, if any, that Seller has agreed to obtain to cure title objections of Buyer made pursuant to Section 5.1(a) and shall also contain any endorsements requested by Buyer which Title Insurer has agreed to issue. Seller shall have no obligation to provide endorsements to the Title Policy which are not approved for issuance by Title Insurer. Seller will satisfy Escrow Agent's standard requirements for issuance of such policy, other than those, if any, within Buyer's control. Buyer must satisfy all of Escrow Agent's requirements for issuance of any title insurance endorsements requested by Buyer.

ARTICLE 7 CLOSING THE TRANSACTION

7.1 Closing. The closing of this transaction (the "Closing" or "Close of Escrow") shall occur promptly after the completion of all of the following events (i) Buyer has obtained an Approved Site Plan (as defined in Section 5.2(l)), (ii) Buyer has obtained the DRB Approval (as defined in Section 5.2(m)), (iii) Buyer has obtained the Issued Permits (as defined in Section 5.2(n)), (iv) Buyer, in writing, informs Escrow Agent and Seller no fewer than thirty (30) days before the scheduled Closing that it intends to close on a date set forth in such notice; and (v) Buyer, in writing, informs Escrow Agent and Seller no fewer than five (5) business days before the scheduled Closing that requirements described in (i), (ii), and (iii) have been satisfied (the "Closing Date"); provided, however, if the above requirements (i) through (v) have not been completed by January 11, 2010, then this Agreement shall automatically terminate and shall be of no further force or effect, and Buyer and Seller shall have no further obligations or liabilities hereunder, except for any obligations or liabilities which survive the termination of this Agreement. If the date of the Closing would otherwise occur prior to expiration of a Supplemental Review Period, at Buyer's request, the Closing Date shall be extended to the day following expiration of the Supplemental Review Period. The Closing shall occur in the offices of Escrow Agent.

7.2 Closing Costs and Prorations.

(a) Escrow Fees. Seller and Buyer will each pay one-half of the Escrow fees.

(b) Title Insurance Fees. Seller will pay the entire premium for a standard coverage owner's policy of title insurance in the amount of the Sales Price and the premium for any endorsements required to cure any title objections of Buyer which Seller has agreed to cure through the issuance of endorsements. Buyer will pay the additional premium necessary to obtain the Title Policy described in Section 6.3 and the cost of any additional endorsements to such Title Policy requested by Buyer.

(c) Recording Fees. Buyer will pay the cost of recording the Deed. Seller will pay the cost of removing liens, encumbrances or other title matters if Seller elects to undertake such matters under Section 5.1(a)(i)(2). Recording fees for any new loan(s) obtained by Buyer shall be paid by Buyer.

(d) Taxes and Assessments. Real estate taxes, irrigation district assessments,

and improvement assessment fees, if any, will be prorated in the escrow as of the Closing based upon the most current information then available to Escrow Agent.

(e) Miscellaneous Closing Costs. Any other closing costs not provided for above will be paid by Buyer and Seller as they shall mutually agree.

7.3 Payments and Disbursements to be Handled through the Escrow. The various charges, credits and prorations contemplated by this Agreement will be handled by Escrow Agent through the Escrow by appropriate charges and credits to Buyer and Seller, and each party shall pay its allocable closing costs and charges in cash, it being the intent of the parties that Seller receive a "net" payment of \$10,000,000.00 payment from Buyer at Closing and pay its escrow, title and other fees and charges separately. All amounts payable pursuant to this Agreement will be paid to Escrow Agent for disposition through the Escrow. Escrow Agent is authorized to make all disbursements to the parties and to third parties contemplated by this Agreement from funds deposited for those purposes, as necessary or appropriate to close this transaction.

7.4 Final Disbursement to Seller. Upon the Closing or prior to such date as expressly required by this Agreement, all amounts paid according to Sections 2.1 will be disbursed to Seller.

7.5 Buyer's Obligation to Deposit Additional Funds. On or before the Closing, Buyer will deposit with Escrow Agent cash in an amount sufficient to pay all closing costs and other amounts payable by or otherwise chargeable to Buyer.

7.6 IRS Reporting at Closing. Escrow Agent agrees to be the designated "reporting person" under Section 6045(e) of the U.S. Internal Revenue Code with respect to the real estate transaction described in this Agreement and to prepare, file and deliver such information, returns and statements as the U.S. Treasury Department may require by regulations or forms in connection therewith, including Form 1099-B.

7.7 Recording and Filing of Documents. At the Closing, the Deed, the Deed of Trust, grant or map of dedication for Easements shall be recorded by Escrow Agent in the Maricopa County Recorder's Office.

ARTICLE 8

ADDITIONAL COVENANTS

8.1 Possession. Sole and exclusive possession of the Property will be delivered to Buyer upon the Closing, subject only to the Approved Title Exceptions, the lien created by the Deed of Trust, and the restrictions set forth in the Deed; provided, however, that Seller shall have the right to continue to use the Property for municipal park, golf course, and recreational purposes, at no cost to Seller, following the Closing up through the Removal Period (as defined in Section 2.5).

8.2 Risk of Loss. Except as provided in the Access Agreement, the risk of loss or damage to the Property and all liability to third persons until the Closing will be borne by Seller.

8.3 Right to Enter and Inspect the Property. Subject to the Access Agreement, from time to time prior to the Closing, Buyer may enter the Property with Buyer's representatives, contractors, and agents to examine the Property, conduct soil tests, environmental studies, engineering feasibility studies, and other tests and studies, and to plan the proposed development of the Property pursuant to the terms of the Access Agreement.

8.4 Brokerage. If any person asserts a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the party under whom the finder or broker is claiming shall be fully responsible for all claims related thereto and, to the extent authorized by law, shall indemnify, pay, defend and hold the other party harmless for, from, and against any claims related thereto. This indemnity will survive the Closing or the cancellation of this Agreement.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of Seller.

(a) Seller represents that:

(i) As of the date hereof, to the best of Seller's actual knowledge, there are no pending, threatened or contemplated actions, suits, proceedings or investigations, at law or in equity, or otherwise in, for or by any court or governmental board, commission; agency, department or office arising from or relating to this transaction, the Property or the operations of Seller on the Property.

(ii) As of the date hereof, Seller has not received notice from any governmental or other agency, and to the best of Seller's actual knowledge, there are no proceedings with respect to or in connection with the condemnation of the Property.

(iii) Seller has not granted any options or rights of first refusal to purchase all or any part of the Property.

(iv) Subject to Seller's City Council's approval of this transaction and the express terms and limitations in this Agreement, and further subject to the Public Vote described in Section 5.2(o), the person or persons executing this Agreement on behalf of Seller are duly authorized to do so and thereby bind Seller hereto without the signature of any other party.

(v) Subject to Seller's City Council's approval of this transaction, and further subject to the Public Vote described in Section 5.2(o), Seller has all requisite power and authority to enter into and perform this Agreement and to incur the obligations provided for

herein and has taken all action necessary to authorize the execution, delivery and performance of this Agreement subject to the express terms and limitations in this Agreement.

(vi) Seller has not filed for protection or relief under any applicable bankruptcy or creditor protection statute nor has Seller been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute. Seller is not entering into this Agreement with an intent to defraud any creditor or to prefer the rights of one creditor over any other.

(vii) Subject to the Public Vote described in Section 5.2(o), Agreement is valid, binding and enforceable in accordance with its terms.

(viii) Seller has received no written notice and has no actual knowledge, of any noncompliance with any Federal, state or local laws, regulations and orders relating to environmental matters with respect to the Property. Seller has received no written notice and has no actual knowledge, that Seller is a potentially responsible party for a Federal, state or local clean-up site or corrective action with respect to the Property under any environmental law, regulation or order.

(b) Inaccuracy of Representation. If a matter represented by Seller under this Agreement was true as of the date of this Agreement, but subsequently is rendered inaccurate because of the occurrence of events or because of a cause other than Seller's intentional breach of this Agreement, then such inaccuracy shall not constitute a default by Seller under this Agreement, but will constitute a failure of a condition to Closing only if such inaccuracy materially increases the Buyer's good faith estimate of the cost or time to develop the Property. Failure of such a condition to Closing shall entitle Buyer to terminate this Agreement at Closing and receive a refund of the Earnest Money, whereupon both parties shall be released from further liability under this Agreement, except as expressly provided in this Agreement to survive. If Buyer does not elect to so terminate, Buyer shall timely proceed to Closing and the failure of such condition to Closing shall be deemed waived.

(c) Actual Knowledge of Seller. When used in this Agreement, the term "actual knowledge of Seller" (or words of similar import) shall mean and be limited to the actual (and not imparted, implied or constructive) current knowledge of Scot Rigby and Douglas Tessendorf. Notwithstanding anything herein to the contrary, Mr. Rigby and Mr. Tessendorf are not a party to this Agreement and shall not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or Seller's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete in any respect.

9.2 Representations and Warranties of Buyer. Buyer represents that:

(a) The person or persons executing this Agreement on behalf of Buyer are duly authorized to do so and thereby bind Buyer hereto without the signature of any other party.

(b) Buyer has all requisite power and authority to enter into and perform this Agreement and to incur the obligations provided for herein and has taken all action necessary to

authorize the execution, delivery and performance of this Agreement, subject to the express terms and limitations in this Agreement. Buyer is a duly formed Delaware limited liability company and has completed all necessary requirements in Arizona to be authorized to do business as a foreign corporation in Arizona.

(c) This Agreement is valid, binding and enforceable in accordance with its terms.

(d) The execution, delivery and performance of this Agreement by Buyer does not result in any violation of, and does not conflict with or constitute a default under, any present agreement, mortgage, deed of trust, indenture, credit extension agreement; license, security agreement or other instrument to which Buyer is a party, or any judgment, decree, order; statute, rule or governmental regulation.

(e) No approvals or consents by third parties or governmental authorities are required in order for Buyer to consummate the transactions contemplated hereby.

9.3 Survival. Each of the representations and warranties contained in Sections 9.1 and 9.2, whether made by Seller or Buyer, shall be true and correct as of the Closing (subject to modification as expressly permitted by this Agreement) and shall survive the Closing and the delivery of the Deed to Buyer for a period of three (3) years.

ARTICLE 10

RELEASE

10.1 Release from Representations and Warranties. Except as is otherwise expressly provided in this Agreement, Seller hereby specifically disclaims any warranty (oral or written) concerning (i) the nature and condition of the Property and its suitability for any and all activities and uses that Buyer may elect to conduct on the Property; (ii) the manner, construction, condition and state of repair or lack of repair of any improvements located on the Property; (iii) the nature and extent of any right-of-way, lien, encumbrance, license, reservation, condition, or otherwise; (iv) the compliance of the Property or its operation with any laws, rules, ordinances or regulations of any government or other body, it being specifically understood that Buyer shall have full opportunity during the Feasibility Period, to determine for itself the condition of the Property; and (v) any other matter whatsoever except as expressly set forth in this Agreement. Except as is otherwise expressly provided in this Agreement, the sale of the Property as provided for in this Agreement is made on a strictly "AS IS" "WHERE IS" basis as of the Closing Date. Except as otherwise expressly provided in this Agreement, Buyer expressly acknowledges that, in consideration of the agreements of Seller in this Agreement, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY; QUALITY; CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, ANY IMPROVEMENTS LOCATED ON THE PROPERTY OR ANY SOIL CONDITIONS RELATED TO THE PROPERTY. BUYER SPECIFICALLY ACKNOWLEDGES THAT BUYER IS NOT RELYING ON (AND SELLER HEREBY DISCLAIMS AND RENOUNCES)

ANY REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF SELLER OF ANY KIND OR NATURE WHATSOEVER, EXCEPT AS IS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. FURTHER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, BUYER, FOR BUYER AND BUYER'S SUCCESSORS AND ASSIGNS, HEREBY RELEASES SELLER FROM AND WAIVES ANY AND ALL CLAIMS AND LIABILITIES AGAINST SELLER FOR, RELATED TO, OR IN CONNECTION WITH, ANY ENVIRONMENTAL CONDITION AT THE PROPERTY (OR THE PRESENCE OF ANY MATTER OR SUBSTANCE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY), INCLUDING, BUT NOT LIMITED TO, CLAIMS AND/OR LIABILITIES RELATING TO (IN ANY MANNER WHATSOEVER) ANY HAZARDOUS, TOXIC OR DANGEROUS MATERIALS OR SUBSTANCES LOCATED IN, AT, ABOUT OR UNDER THE PROPERTY, OR FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION (ACTUAL OR THREATENED) BASED UPON, IN CONNECTION WITH OR ARISING OUT OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, 42 U.S.C. § 9601, *ET SEQ.* ("CERLA"); THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6901, *ET SEQ.* ("RCRA"); AND THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT, 42 U.S.C. § 9601, *ET SEQ.* ("SARA") OR ANY OTHER CLAIM OR CAUSE OF ACTION (INCLUDING ANY FEDERAL OR STATE BASED STATUTORY, REGULATORY OR COMMON LAW CAUSE OF ACTION) RELATED TO ENVIRONMENTAL MATTERS OR LIABILITY WITH RESPECT TO OR AFFECTING THE PROPERTY. BUYER REPRESENTS TO SELLER THAT BUYER HAS CONDUCTED, OR WILL CONDUCT BEFORE CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY AND WILL RELY SOLELY ON SAME AND NOT ON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES, AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, *BUT NOT* LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS, AND BUYER, ON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED, AND RELEASED SELLER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, THAT BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER, AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY

AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES, OR MATTERS REGARDING THE PROPERTY EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, BUYER AGREES THAT SHOULD ANY CLEANUP, REMEDIATION, OR REMOVAL OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY BE- REQUIRED AFTER THE DATE OF CLOSING, SUCH CLEANUP, REMOVAL, OR REMEDIATION SHALL BE THE RESPONSIBILITY OF AND SHALL BE PERFORMED AT THE SOLE COST AND EXPENSE OF BUYER.

Buyer acknowledges and agrees that the provisions contained in this Section 10.1 were a material factor in Seller's acceptance of the sales price and that Seller was unwilling to sell the property to Buyer unless Seller was released as expressly set forth above. BUYER, WITH BUYER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT AND UNDERSTANDS THEIR SIGNIFICANCE AND EFFECT. BUYER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT ARE AN INTEGRAL PART OF THIS AGREEMENT; AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE PROPERTY TO BUYER FOR THE SALES PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT. THE TERMS AND CONDITIONS OF THIS SECTION 10.1 WILL EXPRESSLY SURVIVE THE CLOSING, ARE NOT SUBJECT TO THE TIME LIMITATION SET FORTH IN SECTION 9.3 AND WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS.

ARTICLE 11 REMEDIES

11.1 Seller's Remedies. If Buyer fails to deposit the Closing Payment (as defined in Section 2.1(b)) in the time and manner set forth in this Agreement or to perform when due any other act required by this Agreement, then provided that Seller has fully performed its obligations in accordance with this Agreement, Seller's sole and exclusive remedy shall be to (1) cancel this Agreement and the Escrow, such cancellation to be effective immediately upon Seller giving written notice of cancellation to Buyer and Escrow Agent and (ii) to receive the Earnest Money paid pursuant to Section 2.1(a) from Buyer as liquidated damages and not as a penalty, the parties agreeing and hereby stipulating that the exact amount of damages would be extremely difficult to ascertain and that such amount constitutes a reasonable and fair approximation of such damages. Immediately following Seller's cancellation as described herein and without further instructions from Buyer, the Earnest Money shall be released by Escrow Agent to Seller in payment of the liquidated damages amount payable to Seller pursuant to this Section 11.1. Following such cancellation and payment of the liquidated damage amount, both parties shall be relieved of and released from any further liability under this Agreement, except that in addition to payment of the liquidated damage amount, (i) the indemnification obligations of Buyer set forth in this Agreement and in the Access Agreement shall survive the cancellation and shall be performable and owing by Buyer to Seller; and (ii) Seller shall also have the right (if it is the prevailing party) to collect from Buyer all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Seller if Buyer disputes Seller's right to cancel this transaction and receive liquidated damages as provided herein.

11.2 Buyer's Remedies. If Seller fails to perform when due any act required by this Agreement to be performed, then, provided Buyer has fully performed its obligations in accordance with this Agreement, Buyer may elect as its sole remedy hereunder either to (1) cancel this Agreement and the Escrow and receive the return of all Earnest Money (and Escrow Agent is hereby instructed to deliver any such amounts in Escrow to Buyer), such cancellation to be effective immediately upon Buyer giving written notice of cancellation to Seller and Escrow Agent, or (ii) seek specific performance of this Agreement, provided that no such action for specific performance shall require Seller to do any of the following: (a) change the condition of the Property or restore any improvement on the Property after any fire or other casualty; or (b) expend money or post a bond to remove a title encumbrance or defect or to correct any matter shown on a survey or title report covering the Property. Buyer shall also have the right (if it is the prevailing party) to collect from Seller all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Buyer if (1) Seller disputes Buyer's right to receive the return of the Earnest Money in the event of Seller's default as described herein and Buyer's election to cancel this Agreement and receive the Earnest Money, or (2) Buyer seeks and obtains specific performance of this Agreement. In no event shall Buyer be entitled to seek or recover monetary damages from Seller and Buyer hereby waives its right to do so.

11.3 Notice of Breach; Remedies. In the case of an alleged breach of this Agreement by either party, the party shall not be considered to be in breach and no remedies may be pursued for such breach until a written notice describing the alleged breach and the action required to cure the breach has been given to the allegedly defaulting party and such party has failed to cure the default within ten (10) days thereafter. Notwithstanding any contrary provision of this Agreement, the provisions of Article 11 shall not limit the parties' rights in connection with any indemnity granted pursuant to this Agreement or the Access Agreement, or limit Seller's rights to collect any amounts payable by Buyer to Seller pursuant to Section 2.1.

ARTICLE 12 GENERAL PROVISIONS

12.1 Certain Definitions. As used in this Agreement, certain capitalized terms are defined as follows:

(a) "Affiliate" means, with respect to Buyer, any company, partnership, or corporation which (i) directly or indirectly controls Buyer, (ii) is directly or indirectly controlled by Buyer, or (iii) is directly or indirectly controlled by a company or corporation which directly or indirectly controls Buyer, where "control" means the right to exercise votes attaching to more than fifty percent (50%) of the voting shares of the company, partnership or corporation in question.

(b) "Claims" means any and all obligations, debts, covenants, conditions, representations, costs, and liabilities and any and all demands, causes of action, and claims, of every type, kind, nature or character, direct or indirect, known or unknown, absolute or contingent, determined or speculative, at law, in equity or otherwise, including attorneys' fees and litigation and court costs.

(c) "Related Parties" means, with respect to any person or entity, the officers, directors, shareholders, partners, members, employees, agents, attorneys, successors, personal representatives, heirs, executors, or assigns of any such person or entity.

12.2 Assignment. Buyer may not assign or transfer its rights under this Agreement without the prior written consent of Seller, which may be given or withheld in Seller's sole discretion. Notwithstanding the foregoing, Buyer shall be entitled to assign its rights under this Agreement to an Affiliate. In connection with any assignment approved by Seller or to an Affiliate of Buyer as permitted herein, (a) the assignee shall assume the obligations of Buyer hereunder pursuant to an assignment agreement which inures to the benefit of and is enforceable by Seller, and (b) Seller shall be provided with an executed copy of the assignment agreement at least fifteen (15) days prior to the Closing.

12.3 Binding Effect. Except as limited by Section 12.2, the provisions of this Agreement are binding upon and will inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

12.4 Attorneys' Fees. In any suit, action, or proceeding (a) to enforce and/or defend this Agreement or any modification hereof; (b) to interpret this Agreement or any modification hereof, and/or (c) arising out of or having its roots in this Agreement or any modification hereof, the Prevailing Party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs of suit, and any other relief granted by the court, whether or not any judgment is entered. "Prevailing Party" within the meaning of this Section includes, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought by it.

12.5 Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver will in no way excuse the other party from the performance of any of its other obligations under this Agreement.

12.6 Construction. This Agreement will be construed according to the laws of the State of Arizona, without giving effect to its conflict of laws principles. References in this Agreement to "Sections" or "Articles" are to the Sections and Articles in this Agreement, unless otherwise noted.

12.7 Time. Time is of the essence of this Agreement.

12.8 Notices.

(a) Notices will be in writing and will be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, by facsimile transmission, or by express delivery service, freight prepaid. Notices will be delivered

or addressed to Seller and Buyer at the addresses or facsimile numbers set forth on the first page of this Agreement or at such other address or number as a party may designate in writing. The date notice is deemed to have been given, received and become effective will be (a) the date on which the notice is delivered, if notice is given by personal delivery, (b) the date of actual receipt, if the notice is sent through the United States mail or by express delivery service, or (c) if notice is sent by facsimile transmission, on the date of transmission, if the transmission is - commenced prior to 5:00 o'clock p.m. (local time at the place of receipt) and continuously transmitted thereafter until complete, otherwise on the day following the date of transmission.

(b) Copies of all notices shall also be provided as follows:

Buyer's Attorney: W. Ralph Pew
Pew & Lake PLC
1930 E. Brown Rd. Suite 101
Mesa, AZ 852003
Facsimile: (480) 461-4676

Seller's Attorney: Deborah J. Spinner
City of Mesa
City Attorney
20 East Main Street, Suite 850
Mesa, AZ 85211
Facsimile: (480) 644-2498

12.9 Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

12.10 Time Periods. Except as expressly provided for in this Agreement, the time for performance of any obligation or taking any action under this Agreement will be deemed to expire at 5:00 o'clock p.m. (Mountain Standard Time) on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday of the City of Mesa, the time for performance or taking such action will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday of the City of Mesa.

12.11 Headings and Counterparts. The headings of this Agreement are for purposes of reference only and will not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument.

12.12 Entire Agreement. This Agreement, which includes the following Exhibits:

Exhibit A	Legal Description of Real Property
Exhibit B	Promissory Note

Exhibit C	Deed of Trust
Exhibit D	Access Agreement
Exhibit E	Special Warranty Deed

constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by Buyer and Seller.

12.13 Compliance with State Law Restrictions. The obligations of Seller, pursuant to the provisions of this Agreement which require the expenditure of funds do not constitute a general obligation or indebtedness of Seller within the meaning of any constitutional or statutory debt limitation or restriction, and do not obligate Seller to make any expenditure from proceeds from ad valorem taxes or obligations to which any general taxing authority is pledged or from its general funds unless the expenditure has been duly budgeted if and to the extent required bylaw and is within all budget and expenditure limitations of, and is not in conflict with, the Constitution or laws of the State of Arizona.

12.14 Applicability of Certain Statutes. Notice is hereby given of the applicability of A.R.S. § 12-133, § 12-1518, and § 38-511.

12.15 Nondiscrimination. Buyer and Seller agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.

12.16 Records. To the extent required by A.R.S. § 35-214, Buyer and Seller agree to retain all records relating to this Agreement and to make those records available at all reasonable times for inspection and audit by the other party or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five (5) years after the completion of this Agreement. The records shall be provided at a location designated by the requesting party upon reasonable notice to the other.

[The remainder of the page has been intentionally left blank. All signatures appear on the following page.]

Buyer and Seller have executed this Agreement as of the date first above written.

SELLER:

City of Mesa, an Arizona municipal corporation

Christopher J. Brady
City Manager

Pursuant to Resolution of the Mayor and Council
adopted _____.

BUYER:

WAVEYARD DEVELOPMENT, LLC, a Delaware
LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

The undersigned Escrow Agent accepts the
engagement to handle the Escrow on the terms
and conditions described herein.

By: _____
Name: _____
Title: _____
"Escrow Agent"

OPENING DATE: _____

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT "A"
WAVEYARD
PRELIMINARY PROJECT BOUNDARY

THAT PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID 18 AND THAT PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 18 AND THAT PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 18 AND THAT PART OF THE NORTHWEST QUARTER OF SECTION 18 AND THAT PART OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 18 AND THAT PART OF THE NORTHWEST QUARTER OF SECTION 17 DESCRIBED AS FOLLOWS, THE COURSES GIVEN BEING BASED ON AN ASSUMED COURSE OF EAST FOR THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 18, TO-WIT:

BEGINNING AT THE EAST QUARTER SECTION CORNER OF SAID SECTION 18;

THENCE NORTH 0 DEGREES 56 MINUTES 23 SECONDS EAST ALONG THE SECTION LINE 45.01 FEET;

THENCE IN A WESTERLY DIRECTION SOUTH 89 DEGREES 29 MINUTES 09 SECONDS 1091.82 FEET TO A **POINT OF BEGINNING**;

THENCE IN A WESTERLY DIRECTION SOUTH 89 DEGREES 27 MINUTES 09 SECONDS WEST 1587.39 FEET;

THENCE IN A WESTERLY DIRECTION SOUTH 89 DEGREES 25 MINUTES 46 SECONDS WEST 1613.72 FEET;

THENCE IN A NORTHERLY DIRECTION NORTH 01 DEGREES 40 MINUTES 11 SECONDS WEST 293.12 FEET;

THENCE IN A WESTERLY DIRECTION SOUTH 89 DEGREES 30 MINUTES 34 SECONDS WEST 378.63 FEET;

THENCE IN A WESTERLY DIRECTION SOUTH 89 DEGREES 30 MINUTES 34 SECONDS WEST 26.21 FEET;

THENCE IN A NORTHEASTERLY DIRECTION NORTH 33 DEGREES 15 MINUTES 30 SECONDS EAST 261.71 FEET;

THENCE IN A NORTHEASTERLY DIRECTION NORTH 13 DEGREES 48 MINUTES 16 SECONDS EAST 286.14 FEET;

THENCE IN A NORTHEASTERLY DIRECTION NORTH 64 DEGREES 23 MINUTES 35 SECONDS EAST 665.74 FEET;

THENCE IN A NORTHEASTERLY DIRECTION NORTH 60 DEGREES 21 MINUTES 57 SECONDS EAST 428.51 FEET;

THENCE IN A NORTHEASTERLY DIRECTION NORTH 76 DEGREES 38 MINUTES 49 SECONDS EAST 220.72 FEET;

THENCE IN A NORTHEASTERLY DIRECTION NORTH 63 DEGREES 27 MINUTES 32 SECONDS EAST 435.15 FEET;

THENCE IN A EASTERLY DIRECTION NORTH 87 DEGREES 50 MINUTES 34 SECONDS EAST 231.33 FEET;

THENCE IN A SOUTHERLY DIRECTION SOUTH 00 DEGREES 16 MINUTES 13 SECONDS EAST 256.64 FEET;

THENCE IN A EASTERLY DIRECTION NORTH 89 DEGREES 43 MINUTES 47 SECONDS EAST 255.62 FEET;

THENCE IN A EASTERLY DIRECTION SOUTH 79 DEGREES 45 MINUTES 07 SECONDS EAST 110.05 FEET;

THENCE IN A EASTERLY DIRECTION NORTH 89 DEGREES 43 MINUTES 47 SECONDS EAST 1288.80 FEET;

THENCE IN A NOTHERLY DIRECTION NORTH 00 DEGREES 19 MINUTES 56 SECONDS EAST 765.59 FEET;

THENCE IN A NORTHEASTERLY DIRECTION NORTH 72 DEGREES 12 MINUTES 48 SECONDS EAST 982.53 FEET;

THENCE IN A SOUTHERLY DIRECTION SOUTH 00 DEGREES 58 MINUTES 08 SECONDS WEST 171.42 FEET;

THENCE IN A EASTERLY DIRECTION SOUTH 89 DEGREES 03 MINUTES 28 SECONDS EAST 130.08 FEET;

THENCE IN A SOUTHERLY DIRECTION SOUTH 00 DEGREES 56 MINUTES 23 SECONDS WEST 771.68 FEET;

THENCE IN A SOUTHWESTERLY DIRECTION SOUTH 65 DEGREES 24 MINUTES 15 SECONDS WEST 1258.05 FEET;

THENCE IN A SOUTHERLY DIRECTION SOUTH 02 DEGREES 03 MINUTES 07 SECONDS EAST 837.33 FEET TO THE **POINT OF BEGINNING**.

LEASED PROPERTY

BEGINNING AT THE EAST QUARTER SECTION CORNER OF SAID SECTION 18;

THENCE IN A WESTERLY DIRECTION SOUTH 89 DEGREES 29 MINUTES 09 SECONDS WEST ALONG THE SOUTH LINE OF MID SECTION LINE 1039.12 FEET;

THENCE DEPARTING SAID MID SECTION LINE IN A NORTHERLY DIRECTION NORTH 00 DEGREES 19 MINUTES 56 SECONDS EAST 1284.34 FEET TO A **POINT OF BEGINNING**;

THENCE IN A WESTERLY DIRECTION SOUTH 89 DEGREES 43 MINUTES 47 SECONDS WEST 340.65 FEET;

THENCE IN A NORTHERLY DIRECTION NORTH 00 DEGREES 06 MINUTES 05 SECONDS EAST 38.83 FEET;

THENCE IN A NORTHERLY DIRECTION NORTH 13 DEGREES 46 MINUTES 36 SECONDS WEST 35.97 FEET;

THENCE IN A EASTERLY DIRECTION NORTH 76 DEGREES 13 MINUTES 24 SECONDS EAST 1.57 FEET;

THENCE IN A NORTHEASTERLY DIRECTION NORTH 25 DEGREES 05 MINUTES 21 SECONDS EAST 32.12 FEET;

THENCE IN A EASTERLY DIRECTION NORTH 77 DEGREES 45 MINUTES 49 SECONDS EAST 1.72 FEET;

THENCE IN A NORTHERLY DIRECTION NORTH 12 DEGREES 14 MINUTES 11 SECONDS WEST 38.15 FEET;

THENCE IN A NORTHERLY DIRECTION NORTH 00 DEGREES 06 MINUTES 05 SECONDS EAST 493.23 FEET;

THENCE IN A EASTERLY DIRECTION NORTH 88 DEGREES 40 MINUTES 32 SECONDS EAST 43.91 FEET TO A POINT OF INTERSECTION WITH A CURVE CONCAVE TO THE NORTH;

THENCE NORTHEASTERLY, 25.51 FEET ALONG THE ARC OF SAID CURVE, SAID CURVE HAVING A RADIUS OF 100.00 FEET, A CENTRAL ANGLE OF 14 DEGREES 36 MINUTES 54 SECONDS AND A CHORD THAT BEARS NORTH 81 DEGREES 22 MINUTES 05 SECONDS EAST A DISTANCE OF 25.44 FEET;

THENCE IN A EASTERLY DIRECTION NORTH 74 DEGREES 03 MINUTES 38 SECONDS EAST 76.50 FEET TO A POINT OF INTERSECTION WITH A CURVE CONCAVE TO THE SOUTHEAST;

THENCE EASTERLY, 29.98 FEET ALONG THE ARC OF SAID CURVE, SAID CURVE HAVING A RADIUS OF 112.00 FEET, A CENTRAL ANGLE OF 15 DEGREES 20 MINUTES 12 SECONDS AND A CHORD THAT BEARS NORTH 81 DEGREES 43 MINUTES 44 SECONDS EAST A DISTANCE OF 29.89 FEET;

THENCE IN A EASTERLY DIRECTION NORTH 89 DEGREES 23 MINUTES 50 SECONDS EAST 52.68 FEET;

THENCE IN A NORTHERLY DIRECTION NORTH 00 DEGREES 36 MINUTES 10 SECONDS WEST 63.88 FEET;

THENCE IN A EASTERLY DIRECTION NORTH 72 DEGREES 10 MINUTES 19 SECONDS EAST 125.81 FEET;

THENCE IN A SOUTHERLY DIRECTION SOUTH 00 DEGREES 19 MINUTES 56 SECONDS WEST 765.59 FEET TO THE **POINT OF BEGINNING**.

PROPERTY LINE SKETCH OF EXHIBIT 'A'	
DATE: 05-30-2007	SHEET 1 OF 1 NOT TO SCALE

NORTH WEST CORNER OF
SECTION 18, T.1N.,R.5E

NORTH EAST CORNER OF
SECTION 18, T.1N.,R.5E

LEASE PROPERTY
5.3 ACRES ±

WAVEYARD
120.6 ACRES ±

WEST HALF
SECTION OF
SECTION 18,
T.1N.,R.5E

POINT OF
BEGINNING

8TH STREET

DORSON ROAD



EXHIBIT B
PROMISSORY NOTE

\$20,000,000.00

Mesa, Arizona

_____, 2007

FOR VALUE RECEIVED, the undersigned promises to pay to the order of the City of Mesa, Arizona, a municipal corporation ("Holder"), at 20 East Main Street, Suite 750, Mesa, Arizona 85211, or to such other persons or places as may be designated from time to time by notice to the undersigned, the principal sum of Twenty Million and no/100 Dollars (\$20,000,000.00), together with interest on the principal balance from time to time outstanding at an annual rate of interest equal to four and four-tenths (4.4%) per annum. Interest is to be charged on a daily basis on the unpaid principal amount for the actual number of days that principal is outstanding from the date hereof until paid.

1. No payments shall be required for the first four years after the date of this Note. However, interest shall accrue on the unpaid principal balance of this Note until the fourth (4th) anniversary of this Note. Accrued interest shall be added to, and shall increase, the unpaid principal balance of this Note and shall be compounded annually.

2. Commencing on the fourth (4th) anniversary of this Note, the undersigned shall make monthly payments of the unpaid principal balance of this Note and interest at the rate set forth above, which payments shall be fully amortized on the basis of a twenty-year term and shall be paid to the Holder on or before the _____ day of every month thereafter until this Note, and all unpaid interest and other amounts payable hereunder, have been paid in full. The entire unpaid principal balance of this Note, all accrued and unpaid interest and all other amounts payable hereunder (the "Final Payment") shall be paid in full on or before the twentieth (20th) anniversary of this Note (the "Due Date").

3. The undersigned shall have the right from time to time to prepay the whole or any part of the principal sum hereof without penalty, bonus or other prepayment charges, provided all interest hereon is paid to the date of prepayment. Any prepayments of principal made shall be applied in the inverse order of maturity.

4. The undersigned promises to pay a late payment charge of ten percent (10%) of the amount of each payment if such payment required to be made hereunder is not received by the Holder within ten (10) days after the due date of such payment; provided however that such charge shall not apply with respect to monthly Rebates being credited by Maker against any monthly payment obligation described in Section 2 above, or against any Shortfall.

5. All payments made hereunder shall be applied in the following order, to the extent applicable: late fees, interest, reasonable costs and attorneys' fees incurred by the Holder for collection, principal then due, and the balance to a reduction of principal in the order set forth above for prepayments. Upon any default by the undersigned hereunder which is not cured within ten (10) days after written notice of such default, or upon any default under the Deed of Trust securing this Note, at the option of Holder without further notice or demand to the

undersigned, the balance of all amounts outstanding hereunder shall become immediately due and payable, in which event the Holder here-of may immediately proceed to take any remedies available to Holder hereunder or under the Deed of Trust securing this Note. The whole of the principal sum, together with costs and attorneys' fees, shall bear interest at the rate of eighteen per-cent (18%) per annum ("Default Rate") after default (until such default is cured) and from and after maturity, whether or not resulting from acceleration. The payment and acceptance of any sums at any time, or the failure to exercise any rights herein given the Holder, shall not constitute a waiver of the Holder's rights in the event of any subsequent default.

6. In the event the Holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this indebtedness, or if the Holder hereof becomes party in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, the undersigned and any endorsers and guarantors hereof agree to pay, in addition to the principal and interest due hereon, all costs and a reasonable amount as attorneys' fees, whether or not suit is brought, and shall further pay all costs, expenses and attorneys' fees incurred after the filing by or against the undersigned of any proceeding under any chapter of the federal bankruptcy code or any similar federal or state statute.

7. The undersigned, any endorsers and any guarantors severally waive all applicable exemption rights, whether under the state constitution, homestead laws or otherwise, and also severally waive valuation and appraisal, demand, presentment, protest and demand, notice of protest, demand and dishonor and non-payment of this Note and all other notice of any kind, and expressly agree that the maturity of this Note, or any payment hereunder, may be extended from time to time without in any way affecting the liability of the undersigned or said endorsers and guarantors.

8. The rate of interest agreed to shall include the interest rate as shown above in accordance with the terms of this Note, plus any additional charges, costs and fees incident to this Note, the Deed of Trust or any guarantee to the extent they are deemed to be interest under applicable law. No provision of this Note or any instrument securing this Note shall be deemed to require the payment or permit the collection of interest in excess of the maximum permitted by law. If any excess of interest in such respect is herein provided for, or shall be adjudicated to be so provided for herein, for whatever reason, the interest required to be paid here-under shall be automatically reduced to the maximum legally enforceable and any excess paid over such maximum enforce-able amount shall be automatically credited against any other indebtedness of the undersigned to the Holder hereof, and, thereafter, any remaining amount refunded to the undersigned in cash, which amount the undersigned agrees to accept.

9. Should this Note be signed by more than one maker, the singular shall include the plural and all the obligations herein contained shall be the joint and several obligations of each signer hereof.

10. The undersigned hereby agrees that this Note shall be governed by the laws of the State of Arizona and secured at all times by that certain Deed of Trust of even date herewith (the "Deed of Trust") on certain property located in Maricopa County, Arizona, as more particularly described in the Deed of Trust. In addition, at the time of delivery of this Note to Holder, Maker

shall deliver a letter of credit (the "LOC") to Holder, in a form reasonably acceptable to Holder and issued by a national banking association reasonably acceptable to Holder, in an amount equal to one-year's worth of amortized payments of principal and interest (the "LOC Amount"), as further security for Maker's repayment of this Note. The LOC, if not issued for the full term of this Note, shall be renewed annually by Maker (with written evidence of such renewal being delivered to Holder) and shall not be permitted to expire without at least thirty (30) days' prior written notice from the issuing bank to Holder. Holder shall be permitted to draw (i) against the full amount of the LOC if the LOC has not been timely renewed in accordance with this Section 10, or (ii) against the LOC in the amount of any Shortfall if Holder does not timely pay such Shortfall in accordance with Section 11 below, or (iii) against the LOC in the amount of any required payment from Maker if Holder is not obligated to credit Rebates to Maker pursuant to Section 11 below. All funds paid to Holder from the LOC shall be credited to payment of this Note as provided for herein. In the event that Holder has drawn against all or a portion of the LOC, then Maker immediately shall restore the LOC to the LOC Amount, or deliver a new LOC to Holder; and Maker's failure to do so within thirty (30) days' of the expiration of, or draw against, the LOC, shall be a default by Maker under this Note entitling Holder to invoke any and all remedies available to Holder with respect to such default.

11. Holder and Maker have executed a "Development Agreement" (the "Agreement") dated June __, 2007, that obligates Holder, upon satisfaction of certain conditions by Maker, to credit Maker with certain rebates ("Rebates" or, individually, a "Rebate") of Reimbursable Sales Taxes (as defined in the Agreement) against the payments owing by Maker to Holder pursuant to this Note, but only to the extent such Reimbursable Sales Taxes have been received by Holder. Because of seasonal variations of income from the Project (as defined in the Agreement), from which the sums constituting a portion of the Rebates shall be generated, Rebates either (i) may exceed, with respect to any month, the minimum required amortized payment of principal and interest (and all other amounts) required by this Note, or (ii) may be less than the minimum required amortized payment of principal and interest (and all other amounts) required by this Note. Accordingly, Maker and Holder have agreed to a procedure that permits the Holder to credit Rebates, on a monthly basis, to all amounts then owing to Holder from Maker pursuant to the Note, but with a final determination to be made on an annual basis, commencing on and after the first anniversary of this Note, and on the same annual anniversary of each year thereafter, until this Note has been paid and discharged in full, but in no event beyond the Due Date. If Rebates, for any such annual period, exceed the amounts that are owing from Maker to Holder for such annual period, then any excess shall be applied by Holder to any unpaid principal balance of this Note. If Rebates, for any such annual period, are less than the amounts that are owing from Maker to Holder for such annual period, then Maker, upon five (5) business days' notice from Holder, shall pay to Holder all amounts owing pursuant to this Note for such annual period in excess of the Rebates credited by Holder for such annual period (a "Shortfall"). Subject to the foregoing procedure, Maker agrees, acknowledges and confirms that it is obligated timely to make any and all payments of principal and interest required by this Note if Rebates do not exist, or exist in insufficient amounts to satisfy the payment obligations required by this Note.

WAVEYARD DEVELOPMENT, LLC,
a Delaware limited liability company

By: _____
Richard Mladick, Manager

By: _____
Jerry Hug, Manager

**EXHIBIT C
DEED OF TRUST**

WHEN RECORDED, MAIL TO:

Attn: _____
Escrow no. _____

DEED OF TRUST

TRUSTOR: WAVEYARD DEVELOPMENT, LLC,
 A Delaware limited liability company

TRUSTOR'S MAILING ADDRESS: 8912 East Pinnacle Peak Road
 No. F9-664
 Attn: Jerry Hug or Richard Mladick
 Scottsdale, Arizona 85255

BENEFICIARY: CITY OF MESA, Arizona, a municipal corporation

BENEFICIARY'S ADDRESS: 20 East Main Street
 Mesa, Arizona 85255
 Attn: City Clerk

TRUSTEE: SECURITY TITLE AGENCY
 2152 South Vineyard Avenue,
 Building 6, Ste. 116
 Mesa, Arizona

PROPERTY (the "Property") in Maricopa County, State of Arizona, described as:

*See Exhibit A attached hereto
And by this reference incorporated herein*

THIS DEED OF TRUST is made between the Trustor, Trustee and Beneficiary named above. Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, the above-described real property and all buildings, improvements and fixtures located thereon or hereinafter erected thereon, together with the leases, rents, issues, profits, or income thereof, (all of which are hereinafter called "property income"); SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such

property income; AND SUBJECT TO covenants, conditions, restrictions, rights-of-way, and easement of record.

THIS DEED OF TRUST IS MADE FOR THE PURPOSE OF SECURING: (a) performance of each agreement of Trustor herein contained; (b) payment of the indebtedness evidenced by the promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of Twenty Million and No/100ths Dollars (\$20,000,000.00) executed by Trustor in favor of Beneficiary; and (c) payment of additional sums and interest thereon which may hereafter be owing by Trustor, or its successors or assigns, to Beneficiary, when evidenced by a promissory note(s) or other written instruments reciting that they are secured by this Deed of Trust (collectively, the "Obligations").

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

1. To keep the Property in good condition and repair, reasonable wear and tear excepted; not to remove or demolish any building thereon without Beneficiary's prior written consent; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, but only to the extent of any insurance proceeds received by Trustor, and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; and do all other acts which from the character or use of the Property may be reasonably necessary.

2. To insure the Property with responsible insurers for the full insurable value thereof against loss by fire and such other hazards as may be customarily insured against for similar property and to pay all premiums thereon not less than thirty (30) days prior to the expiration date of any coverage. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount of so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

3. To appear in and defend any action or proceeding purporting to affect the Property, the security hereof or the rights or powers of Beneficiary or Trustee and to pay all costs and expenses of Beneficiary and Trustee, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named and in any suit brought by Beneficiary to foreclose this Deed of Trust.

4. To pay: before delinquent, all taxes and assessments affecting the Property; when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof which appear to be prior or superior hereto; all costs, fees and expenses of this Trust, including, without limiting the generality of the foregoing, the fees of Trustee for issuance of the Deed of Release and Full Reconveyance and all lawful charges, costs, and expenses in the event of

reinstatement of, following default in, this Deed of Trust or the obligations secured, hereby.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, pay necessary expenses, employ counsel, and pay counsel's reasonable fees.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from the date of expenditure at the Default Rate as provided for in the note secured by this Deed of Trust. Any amounts so paid by Beneficiary or Trustee shall become part of the debt secured by this Deed of Trust and a lien on the Property or shall become immediately due and payable at option of Beneficiary or Trustee.

IT IS MUTUALLY AGREED:

6. That any award of damages in connection with any condemnation, or any such taking, or for injury to the Property by reason of public use or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto the Trustor, however, the right to sue therefor and for the ownership thereof subject to this Deed of Trust), and, upon receipt of such moneys, Beneficiary may hold the same as such further security or apply or release the same in the same manner and with the same effect as above-provided for disposition of proceeds of fire or other insurance.

7. That time is of the essence of this Deed of Trust, and that by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

8. That at any time or from time to time, and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note(s) for endorsement, without liability therefor, without affecting the personal liability of any person for payment of the indebtedness secured hereby, without affecting the security hereof for the full amount secured hereby on all property remaining subject hereto and without the necessity that any sum representing the value or any portion thereof of the property affected by the Trustee's action be credited on the indebtedness, the Trustee may: (a) release and reconvey all or any part of the Property; (b) consent to the making and recording, or either, of any map or plat of the Property or any part thereof; (c) join in granting any easement thereon; and (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance or charge hereof.

9. That upon written request of Beneficiary stating that all sums secured hereby have

been paid, and upon surrender of this Deed of Trust and said note(s) to Trustee for cancellation, and upon payment of its fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto.

10. This Deed of Trust shall cover all personal property affixed or located upon the Property which, to the fullest extent permitted by law, shall be deemed fixtures and a part of the Property. Such personal property shall include: (i) all presently owned and hereafter acquired goods, fixtures, furniture, furnishings, machinery, equipment and appliances and all personal property of Trustor now or hereafter attached to or installed or placed in, on or about the Property of use in conjunction with the use and occupancy thereof, together with all accessories, parts and appurtenances thereto and all additions, renewals, improvements, and replacements thereof. Trustor also hereby assigns to Beneficiary all leases and use agreements of all personal property in the categories above set forth, under which Trustor is the lessee or entitled to use such items, which Trustor agrees to execute to Beneficiary separate assignments of such leases and agreements when requested by Beneficiary; but Beneficiary shall not be obligated thereunder unless it so chooses, and Trustor agrees to fully and timely perform such obligations; (ii) all income, rents, issues, and profits which, from and after the date hereof, may accrue from said goods, fixtures, furnishings, machinery, equipment and appliances, or any part thereof, or which may be received or receivable by Trustor from any use, leasing, or subleasing thereof; provided, that so long as Trustor is not in default hereunder, Trustor shall have a license to collect, said income, rents, issues and profits; subject, however, to any Absolute Assignment of Leases and Rentals executed by Trustor to Beneficiary; (iii) all presently owned and hereafter acquired general intangibles and rights of every kind and nature of Trustor relating to the Property or the operation thereof, including but not limited to all governmental permits relating to construction on the Property, all names by which the Property may be operated or known, all rights to carry on business under any such names, and all trade names, trademarks and goodwill in any way relating to the Property; (iv) all presently owned and hereafter acquired reserves, deferred payments, deposits, refunds, and payments, of every kind and nature of Trustor in any way relating to the Property or any of the personal property hereunder other than rents, issues and profits; (v) all presently owned and hereafter acquired water stock owned by Trustor relating to the Property; and, (vi) all presently owned and hereafter acquired drawings, plans and specifications of Trustor prepared for construction of improvements relating to the Property, and all studies, and data related thereto; and all contracts and agreements of the Trustor relating thereto or to the construction of improvements on the Property.

11. That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of this Trust, to collect the Property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. Upon any such default beyond any applicable notice or cure period, Beneficiary may at any time, without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or

any part thereof, sue for or otherwise collect such Property income in his own name, including that past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such Property income and the application thereof as aforesaid, shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

12. That upon default by Trustor beyond any applicable notice or cure period in the payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee and Trustor of written notice thereof, setting forth the nature thereof, and of election to cause the Property to be sold under this Deed of Trust. Beneficiary also shall deposit with Trustee this Deed of Trust, said note(s) and all documents evidencing expenditures secured hereby.

Trustee shall record and give notice of Trustee's sale and shall sell the property at public auction, all in the manner required by law. Any persons, including Trustor, Trustee or Beneficiary, may purchase at such sale. Trustee shall deliver to such purchaser its Deed conveying the property so sold, but without any covenant or warranty, express or implied. Trustor requests that a copy of any notice of Trustee's sale hereunder be mailed to Trustor at his address hereintoforeset forth.

After default or breach, if any sale, proceeding or suit is commenced, Trustor promises to pay Beneficiary's and Trustee's actual attorney's fees, Trustee's fees and its costs and expenses in connection with such proceedings, and if suit is brought, all costs of suit. In addition, Trustor shall pay a reasonable fee for title searches made in preparation for and in the conduct of any such proceedings or suit. All of the foregoing fees and expenses shall be secured by this Deed of Trust.

In the event of sale, the Property may be sold, at the option of Beneficiary or Trustee, in whole or in separate parcels, and Beneficiary or Trustee may bid and become the purchaser at any such sale. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. The proceeds of the sale shall be applied as provided by law. The purchaser at the Trustee's Sale shall be entitled to immediate possession of the Property. Title to all insurance policies and all proceeds thereof shall vest in and become the property of the purchaser at any such sale unless Beneficiary shall direct otherwise.

During the term of this Deed of Trust, Trustor intends to execute lease and license agreements (the "Agreements") for uses on the Property that are consistent with the Special Warranty Deed of even date, by which Beneficiary conveyed title to the Property to Trustor (the "Deed") and with the Development Agreement as defined in the Deed. Beneficiary agrees to execute promptly, commercially reasonable nondisturbance and attornment agreements ("NDRA's"), in form and content acceptable to Beneficiary, for such Agreements presented to

Beneficiary by Trustor that implement and promote the goals and objectives of the Development Agreement, provided, however, that Trustor shall have no obligation to execute an NDRA with respect to any Agreement that (i) is not currently in effect, (ii) is in default, (iii) is not for a then-current "market" rate or otherwise includes terms that are not arms'-length, (iv) is for a term, or includes provisions for extensions or renewals, longer than those existing for or included in comparable lease and/or license agreements, or (v) is to Trustor or an affiliate or principal of Trustor, or to Developer (as defined in the Development Agreement) or an affiliate or principal of Developer.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale and reasonable attorney's fees, Trustee shall apply the proceeds of sale in the manner provided by law. To the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder.

In lieu of sale, pursuant to the power of sale conferred hereby, this Deed of Trust may be foreclosed in the same manner provided by law for the foreclosure of mortgages on real property. Beneficiary shall also have all other rights and remedies available to it hereunder and at law or in equity. All rights and remedies shall be cumulative.

13. That Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor. Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers and duties.

14. The term Beneficiary shall mean the owner and holder of the note(s) secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

15. That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

16. That the trust relationship created by this Deed of Trust is limited solely to the creation and enforcement of a security interest in real property. All of Trustee's duties, whether fiduciary or otherwise, are strictly limited to those duties imposed by this instrument and A.R.S. §33-801 et. seq., inclusive, and no additional duties, burdens or responsibilities are or shall be placed on Trustee.

17. That this Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns.

18. All remedies of Beneficiary may be exercised concurrently or consecutively or in proceedings whether legal or equitable, and no failure of Beneficiary to exercise any rights

hereunder and no delay by Beneficiary or Trustee in the exercise of such rights shall be a waiver thereof.

19. It is understood and agreed by the parties hereto that the Trustor shall not assign or otherwise transfer any right, title or interest in or to the Property or this encumbrance during the life of this encumbrance, without the prior written consent of the Beneficiary to such assignment or transfer, which may be granted or withheld by Beneficiary in its reasonable commercial discretion. In the event of such assignment or transfer without prior written consent of the Beneficiary, all indebtedness secured by this encumbrance shall, at the option of the Beneficiary, become all due and payable

20. Severability; Enforceability.

(a) Each covenant, provision and condition of this Deed of Trust shall be interpreted so as to be valid and effective under applicable law. If any such covenant, provision or condition is held to be void or invalid, the same shall not affect the remainder hereof, which shall be valid and effective as though the void or invalid covenant, provision or condition had not been contained herein.

(b) Should this instrument be or ever become ineffective as a deed of trust, then it shall be construed and enforceable as a realty mortgage (with Trustor as the mortgagor and Beneficiary as the mortgagee).

(c) If the lien of this instrument is invalid or unenforceable (either as a deed of trust or as a realty mortgage) as to any part of the Obligations, or if the lien is invalid or unenforceable as to any portion of the Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Obligations. All payments made on the Obligations, whether voluntary or pursuant to foreclosure or some other enforcement action or procedure taken hereunder, shall be considered to have been first applied to the full payment of that portion of the Obligations which is not secured or fully secured by the lien of this instrument.

21. Environmental Inspection Easement; Toxic Waste and Hazardous Substances; Indemnity.

(a) Trustor hereby grants and conveys to Beneficiary and Beneficiary's agents an easement to enter upon the Property at any time and from time to time, subject to the rights of, and taking reasonable precautions to avoid undue interference with the operations of, tenants in possession of portions of the Property, for the purpose of making such audits, tests, inspections and examinations, including subsurface exploration and testing, as Beneficiary in its sole and exclusive discretion considers to be necessary, convenient or proper to determine whether the ownership, use and operation of the Property and the conduct of the activities engaged in thereon are in compliance with federal, state and local environmental laws, rules and regulations. This easement shall exist and continue until the entire Obligations have been repaid in full. A release of this Deed of Trust shall evidence a termination of the easement granted herein. This easement is coupled with an interest and may not be revoked by Trustor or its successors or assigns (except for Beneficiary and Beneficiary's successors and assigns). Trustor

(b) Trustor shall indemnify, defend, pay and hold harmless Beneficiary and its successors and assigns for, from and against any and all claims, liabilities, proceedings, suits, losses, damages (including punitive damages), judgments and environmental response and clean up costs, fines, penalties and expenses (including reasonable attorney fees, costs and expenses incurred in investigating and defending against the assertion of any such liabilities, regardless of their merit), which may be asserted against, sustained, suffered or incurred by Beneficiary or its successors and assigns because of the existence of any such toxic or hazardous material, substance, waste, pollutant or contaminant or arising from any other violation of any governmental law, regulation or requirement now or hereafter in effect relating to human health or the safety or protection of the environment except to the extent caused by acts or omissions first occurring after Trustor has been dispossessed of the Property by Beneficiary by reason of foreclosure or otherwise. This indemnity shall include claims asserted by any federal, state or local governmental agency or any private party and shall continue in effect following any release and reconveyance of this Deed of Trust or foreclosure or other realization upon the security by Beneficiary or its successors and assigns, or any conveyance in lieu of such foreclosure or other realization

This instrument was acknowledged before me this _____ day of _____, 2000, by Richard Mladick and Jerry Hug, the Managers of WAVEYARD DEVELOPMENT, LLC, a

Delaware limited liability company, on behalf of the company.

Notary Public

My commission expires:

EXHIBIT D
ACCESS AGREEMENT

THIS ACCESS AGREEMENT ("Agreement") is made as of _____, 2007 by and between CITY OF MESA, an Arizona municipal corporation ("Seller"), and WAVEYARD DEVELOPMENT, LLC, a Delaware limited liability company ("Licensee").

RECITALS

A. Seller and Licensee are parties to the Purchase Agreement and Escrow Instructions dated as of June __, 2007 (the "Purchase Agreement") for sale by Seller to Licensee of certain real property located in Maricopa County, Arizona, more particularly described on Exhibit "A" to the Purchase Agreement, which is hereby incorporated herein (the "Property").

B. Licensee desires to enter onto the Property for the purpose of conducting various inspections of the Property as described herein.

NOW, THEREFORE, the parties hereto agree as follows:

1. License to Enter Property. Seller hereby grants Licensee and its duly authorized agents, consultants and independent contractors (collectively, "Representatives") a nonexclusive license to enter upon the Property, at Licensee's sole cost and expense, for the purpose of conducting a Phase I soils analysis of the Property as well as any other non-intrusive tests, studies and surveys relating to the Property; provided, each of Licensee's or its Representatives' entries onto the Property shall only be made (a) with at least three (3) business day's prior written request sent by facsimile to Seller, attn: City Manager; (b) in the presence of representatives of Seller, if required by Seller; (c) in accordance with any reasonable day and time limitations imposed by Seller, and (d) in such a manner so as to not to interfere with the use of the Property by Seller. Notwithstanding anything to the contrary contained herein, Buyer shall not have the right to conduct any ground penetration, drilling, excavation or physical sampling activities whatsoever except as approved in writing by Seller, which may be given or withheld in Seller's sole discretion. Seller may condition its approval on Licensee obtaining additional insurance coverage in an amount that corresponds with the liability risk associated with the requested activity. Neither Licensee nor any of its Representatives may place any structure, sign or other improvement on the Property without Seller's prior written consent, which may be given or withheld in the exercise of Seller's sole discretion.

2. Government Regulations. While on the Property, Licensee and its Representatives shall comply with all applicable governmental laws and regulations.

3. Liens. Licensee shall not suffer or permit to be enforced against the Property any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from the investigations performed by Licensee or its Representatives and Licensee shall pay or

cause to be paid all of said liens, claims or demands before any action is brought to enforce the same against the Property.

4. Indemnity. Licensee shall indemnify, defend (by counsel reasonably satisfactory to Seller) and hold Seller and its divisions, subsidiaries, partners and affiliated members, companies and its and their employees, officers, shareholders, directors, agents, representatives, and professional consultants and its and their respective successors and assigns (collectively, the "Indemnitees") harmless for, from and against any loss, damage, injury, accident, fire or other casualty, liability, claim, cost or expense (including but not limited to, reasonable attorneys' fees) of any kind or character to any person or property, including the property of the Indemnitees (collectively, the "Claims") arising from or relating to Licensee's entry onto the Property, including without limitation (a) any use of the Property by Licensee or its Representatives, (b) any act or omission of Licensee or any of its Representatives, (c) any bodily injury, property damage, accident, fire or other casualty to or involving Licensee or its Representatives and its or their property on the Property, (d) any violation or alleged violation by Licensee or its Representatives of any law or regulation now or hereafter enacted relating to the Property, (e) any loss or theft whatsoever of any property or anything placed or stored by Licensee or its Representatives on or about the Property, (f) any breach by Licensee of its obligations or rights under this Agreement, and (g) any enforcement by Seller of any provision of this Agreement and any cost of removing Licensee from the Property; provided, however, the foregoing indemnity shall not apply to the extent any such Claim is ultimately established by a court of competent jurisdiction to have been caused by the acts or omission of any of the Indemnitees. Notwithstanding anything to the contrary contained herein, the terms and conditions of this Section 4 shall survive the termination of this Agreement, the close of escrow on the Property or the termination or cancellation of the Purchase Agreement.

5. Insurance. Licensee at its sole cost and expense shall maintain comprehensive general liability insurance ("Liability Insurance") on an "occurrence basis" against claims for "personal injury," including without limitation, bodily injury, death or property damage, occurring upon, on or about the Property, such insurance to afford immediate minimum protection, at the time of the inception of this Agreement, and at all times during the term of this Agreement, to a limit of not less than One Million and No/100 Dollars (\$1,000,000.00) with respect to personal injury or death to any one or more persons or for damage to property. Such insurance shall designate, and be for the benefit of, Licensee, as the named insured party and Seller, as an additional insured on the policy as evidenced by additional insured endorsements. The limits of said insurance shall not, however, limit the liability of Licensee hereunder. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days written notice to Seller.

6. Payment of Claims. In addition to and not in limitation of Seller's other rights and remedies under this Agreement, should Licensee fail within ten (10) business days after written request from Seller to either (a) pay and discharge any lien or claim arising out of Licensee's or its Representatives' use of the Property, or (b) indemnify and defend the Indemnities from and against any Claim as provided herein, then in any such case Seller may, at its option, pay any such lien or claim or settle or discharge any action therefore or satisfy any judgment thereon, and

all costs, expenses and other sums incurred by Seller in connection therewith (including but not limited to reasonable attorneys' fees) shall be paid to Seller by Licensee upon written demand together with interest thereon at the rate of ten percent (10%) per annum, from the date incurred or paid until repaid.

7. Termination. Licensee's rights granted by this Agreement shall terminate automatically without notice, except where otherwise indicated, upon the earlier to occur of (a) the termination of the Purchase Agreement for any reason whatsoever, or (b) the date Licensee is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which case Licensee is the bankrupt party.

8. Nature of Licensee's Rights. Licensee acknowledges (a) this Agreement grants Licensee a revocable nonexclusive license, and (b) Licensee has no rights as an owner, purchaser or tenant by virtue hereof. Upon termination of this Agreement, Licensee shall promptly vacate the Property.

9. Maintenance and Condition of Property. Licensee will be responsible for any damage done to the Property by Licensee or its Representatives and, upon departing from or being required to vacate the Property, will pay the costs of repairing and restoring the Property and every portion thereof, if caused by Licensee or its Representatives, to at least as good a condition as existed prior to Licensee's entry onto the Property.

10. Assignability. This Agreement may not be assigned, whether voluntarily or by operation of law and Licensee shall not permit the use of the Property, or any part thereof, except in strict compliance with the provisions hereof, and any attempt to do so shall be null and void; provided, however, Licensee may assign this Agreement to any permitted assignee of Licensee's rights as Buyer under the Purchase Agreement if the assignee agrees, in writing, to fully assume the obligations of Licensee under this Agreement and to otherwise abide by the terms and provisions of this Agreement.

11. Attorneys' Fees. If any action is brought by either party in respect to its rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the court.

12. Binding Effect. Except as limited by the provisions of Section 10, the provisions of this Agreement are binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

13. Applicable Law. This Agreement shall be construed according to Arizona law.

14. Notices. Notices shall be in writing and shall be given by personal or air courier service delivery to a responsible person, by facsimile, or by deposit in the United States mail, certified mail, return receipt requested, postage prepaid. Notices shall be delivered or addressed to Seller and Licensee at the addresses set forth below or at such other address as a party may designate in writing. The date notice is deemed to have been given, received and become effective shall be

the date on which the notice is delivered, if notice is given by personal or air courier service delivery or by facsimile, or the date of actual receipt if the notice is sent through the United States mail.

To "Seller": CITY OF MESA
Douglas Tessendorf
Post Office Box 1466
Mesa, Arizona 85211-1466
Telephone: 480-644-2520
Facsimile: 480-644-3465
Email: douglas.tessendorf@cityofmesa.org

To "Seller": CITY OF MESA
Andrea Moore
Post Office Box 1466
Mesa, Arizona 85211-1466
Telephone: 480-644-2643
Facsimile: 480-644-5320
Email: andrea.moore@cityofmesa.org

To "Licensee": _____

Attn: _____
Telephone: _____
Facsimile No.: _____
Email: _____

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by Seller and Licensee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER:

CITY OF MESA, an Arizona municipal corporation

By: _____
Name: _____
Title: _____

Pursuant to Resolution of the Mayor and Council adopted _____, 2007.

LICENSEE:

WAVEYARD DEVELOPMENT, LLC, a Delaware limited liability company

By: _____
Jerry Hug, Manager

By: _____
Richard Mladick, Manager

EXHIBIT E
SPECIAL WARRANTY DEED

When Recorded, Mail to:

SPECIAL WARRANTY DEED
AND PROPERTY RESTRICTIONS WITH RIGHT OF REVERTER

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received, the CITY OF MESA, an Arizona municipal corporation ("**Grantor**"), does hereby convey to WAVEYARD DEVELOPMENT, LLC, a Delaware limited liability company ("**Grantee**"), all of Grantor's right, title and interest in and to the following described real property (the "**Property**") situated in Maricopa County, Arizona, together with all improvements thereon and all of Grantor's interest in any rights and privileges appurtenant thereto:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS
REFERENCE MADE A PART HEREOF

SUBJECT TO all matters of record and to any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; all previously reserved oil, gas and mineral rights and deposits and appurtenant rights in favor of the United States of America; and all applicable municipal, county, state or federal zoning and use regulations.

AND FURTHER SUBJECT TO the following terms, covenants, conditions, restrictions and rights of reversion (the "Covenants and Reverter"):

1. Covenants Regarding Use of Property. The Property shall be developed and used only as follows:

(A) As to that portion of the Property identified in the Development Master Plan (as defined below) as the "Outdoor Attractions," that portion of the Property shall be developed and used only as a water entertainment project (of the manner that Grantee intends to develop as "Waveyard"), and as further described as the "Minimum Entertainment Improvements" in that certain Development Agreement dated June __, 2007, between Grantor and Grantee, and recorded in the Official Records of Maricopa County as No. _____ (the "Development Agreement"); and

(B) As to the balance of the Property, that balance of the Property shall be developed and used only as a destination resort and hospitality facility and related improvements as described in, and of the quality described in, the Development Agreement and those uses in the project description for the "Development Master Plan" (so-called) approved by the City Council of the City of Mesa, Arizona, in Zoning Case Z07-35.

(C) The use and development of the Property as described in Sections 1(A) and 1(B) above are further subject to certain "Prohibited Uses" as defined and set forth in the Development Agreement.

(D) The restrictions described in this Section 1, including all of its subparts, may be referred to collectively in this Deed as the "Covenants." Grantee agrees and acknowledges that the restricted use of the Property as described in the Covenants has been bargained for with Grantor, and constitutes a material portion of the consideration for the conveyance of the Property from Grantor to Grantee.

2. Reverter. Grantee and its successors and assigns shall at all times comply and abide with any and all of the Covenants set forth in this Deed, including all subparts thereof. If Grantee or any successor or assign of Grantee should fail at any time or times to comply and abide with, or to continue to comply and abide with, any such Covenant, Grantee, or its successors or assigns, as the case may be, shall have a period of sixty successive calendar days commencing upon and immediately following the date of delivery of a written notice from Grantor (or its successors and assigns) identifying such failure (the "Default Notice"), during which sixty day period of time (i) such failure must cease or be cured to the fullest extent objectively possible, or (ii) the cessation or cure of such failure must have been commenced in good faith and be in the process of being diligently pursued to completion, in which case the cessation or cure of said failure must occur to the fullest extent objectively possible no later than one hundred and eighty consecutive calendar days immediately following the delivery of the Default Notice. By acceptance of this Deed, Grantee acknowledges and agrees that the breach of any of the foregoing Covenants not cured in accordance with the provisions of this Section 2, shall cause title to, full ownership of and all rights and benefits to the Property automatically to revert to Grantor or its successors and assigns (the "Reversionary Owner") upon the recordation by Reversionary Owner of a notice in the Official Records of Maricopa County, Arizona, of Reversionary owner's intent to cause the reversion of the Property, which notice shall refer specifically to this Section 2. Promptly following the recordation by Reversionary Owner of the notice described in the immediately preceding sentence and payment by Reversionary Owner to Grantee (the "Payment") of all principal amounts paid by Grantee to Grantor for the Property (but not including interest or the unpaid portion of any promissory note given by Grantee in connection with its purchase of the Property, and in no event more than \$30,000,000.00), the Reversionary Owner shall have the right of immediate re-entry on and exclusive possession of the entire Property and Grantee (and its successors and assigns) shall have no further interest in or to any portion of the Property. In addition, the Covenants set forth above shall be covenants running with the land and the breach of any of them, or the continuance of any breach which is not cured as set forth above, may be enjoined or remedied by appropriate proceedings by the Reversionary Owner, but by no other person. Notwithstanding the foregoing, the Payment shall

be reduced by the sum of Fifty Thousand and no/100 Dollars (\$50,000.00), as an administrative, handling and legal fee to Grantor in connection with exercising its rights under the Reverter, which Grantor and Grantee agree and acknowledge is a fair and reasonable estimation of Grantor's fees, costs and expenses, constitutes a liquidated amount in view of the difficulty of ascertaining the actual amount of such fees, costs and expenses, and is not a penalty.

3. Duration. The Covenants and Reverter shall apply and continue to apply to the Property at all times hereafter for a period of fifty (50) years from the date of recordation of this Deed, and at the expiration of such term shall be deemed automatically, and without further act or instrument required, extinguished and released.

A. Notwithstanding the foregoing, if (i) Grantee has undertaken Commencement of Construction (as defined in the Development Agreement) of the Minimum Entertainment Improvements (as defined in the Development Agreement) and (ii) Grantor's City Manager has determined, in his or her sole and absolute discretion that Grantee has the financial ability (through demonstrated financial worth, existence of binding loan commitments, equity contribution[s] to insure the construction of the Minimum Entertainment Improvements, bonds, and/or other mechanisms) to accomplish timely Completion of Construction (as defined in the Development Agreement) of the Minimum Improvements, then Grantor shall, upon written request by Grantee, record a release of the Reverter, after which time the Reverter shall no longer apply to the Property. Notwithstanding the release of the Reverter, the Covenants shall continue to apply to the Property for the term specified in this Section 3.

B. Notwithstanding the foregoing, if (i) Grantee has timely achieved Completion of Construction (as defined in the Development Agreement) of the Minimum Entertainment Improvements and the Minimum Resort Improvements (as defined in the Development Agreement) and (ii) immediately thereafter opens to the public and continuously operates the Minimum Entertainment Improvements and the Minimum Resort Improvements for a period of three (3) calendar years, then Grantor shall, upon written request by Grantee, record a release of the Covenants, after which time the Covenants shall no longer apply to the Property; provided, however, that notwithstanding the release of the Covenants described in Section 1(A) and Section 1(B) of this Deed, the Prohibited Uses described in Section 1(C) shall continue to apply to the Property and be enforceable for the Term (as defined therein) of the Development Agreement.

4. Enforcement. In addition to the remedies set forth above, all remedies at law and in equity shall be available to Grantor in enforcing the Covenants and Reverter; and Grantor may bring, but is not limited to, an action to obtain specific performance and/or injunctive relief to compel compliance with the terms of the Covenants and Reverter. The election of one remedy shall not exclude the election of another. No waiver or estoppel shall be created or be deemed to exist by the failure to take enforcement action for a violation of these terms.

5. Waiver. No delay or omission on the part of Reversionary Owner in exercising any right, power or remedy provided in this Deed in the event of the breach of the covenants, conditions and restrictions herein shall be construed as a waiver thereof or acquiescence therein

or thereto, and no right of action shall accrue in favor of, nor shall any action be brought or maintained by, anyone whomsoever against the Reversionary Owner for or on account of the Reversionary Owner's failure to bring any action on account of any breach of the covenants, conditions and restrictions contained in this Deed, or for imposing covenants, conditions and restrictions in this deed which may be unenforceable by the Reversionary Owner.

6. Severability. In the event any one or more of the foregoing provisions or covenants, conditions and restrictions is declared for any reason, by a court of competent jurisdiction, to be null and void, the judgment or decree shall not in any manner whatsoever, effect, modify, change, abrogate or nullify any of the covenants, conditions, reservations, restrictions not declared to be void or unenforceable, but all of the remaining covenants, conditions, reservations and restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

7. Notices. Wherever in this deed it shall be required or permitted that notice or demand be given or served by either Grantor or Grantee to or on the other, such notice or demand shall be given or served, and shall not be deemed to have been duly given or served unless in writing and forwarded by (i) certified or registered mail, return receipt requested and postage prepaid, or (ii) by personal delivery (which may include public or private express delivery and overnight courier services) addressed to Grantor or Grantee as follows:

If to Grantor:

If to Grantee:

Either Grantor or Grantee may change such address by written notice in the manner specified above for the giving of notices to the other. Notice shall be deemed delivered and received three (3) business days following deposit with the United States Postal Service if forwarded by certified or registered mail in accordance with the provisions of Section 7(i) above, or upon personal delivery if delivered by personal delivery in accordance with Section 7(ii) above.

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this ____ day of _____, 20__, and Grantee has accepted the Covenants and Reverter by executing this Special Warranty Deed to be effective as of the same date.

GRANTOR:

CITY OF MESA, an Arizona municipal corporation

By: _____

Name: _____

Its: _____

GRANTEE:

WAVEYARD DEVELOPMENT, LLC, a Delaware limited liability company

By: _____

Richard Mladick, Manager

By: _____

Jerry Hug, Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____, 20 __, before me, the undersigned Notary Public, personally appeared _____, who acknowledged him/herself to be the _____ of the CITY OF MESA, an Arizona municipal corporation and that, being authorized so to do, he/she executed the foregoing instrument for the purposes herein contained on behalf of the Grantor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

(Seal)

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of _____, 20 __, before me, the undersigned Notary Public, personally appeared Richard Mladick and Jerry Hug, who acknowledged themselves to be the managers of WAVEYARD DEVELOPMENT, LLC, a Delaware limited liability company, and that, being authorized so to do, they executed the foregoing instrument for the purposes herein contained on behalf of the Grantee.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

(Seal)

EXHIBIT "A" TO SPECIAL WARRANTY DEED

LEGAL DESCRIPTION OF PROPERTY